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April 12, 2019

Via Electronic Filing

Hon. Joseph C. Spero, Magistrate Judge
 U.S. District Court for the Northern District of California
 450 Golden Gate Avenue, Courtroom G, 15th Floor
 San Francisco, California 94102

Re: *SinCo Technologies Pte Ltd. v. Sinco Electronics (Dongguan) Co. Ltd. et al.*
Case No. 17CV05517 -EMC; Motion for Leave to File Motion for Reconsideration
of the Court's Order of April 9, 2019

Dear Judge Spero:

REQUEST FOR LEAVE TO FILE MOTION FOR RECONSIDERATION

SinCo Technologies Pte Ltd., (“SinCo”) and its’ counsel respectfully seek leave of Court pursuant to Civil Local Rule (“Civ. L.R.”) 7-9 (a), to file a motion for reconsideration on narrow portions of its **April 9, 2019** Order Expunging Order to Show Cause. [ECF 187.] Pursuant to Civ. L.R 7-9 (b)(2), a party may bring a motion to reconsider on the basis of “new material facts.” *Toppan Photomasks, Inc. v. Keun Taek Park*, 2014 WL 2758745, at *1 (N.D. Cal. June 17, 2014). DEFENDANTS made material misrepresentations or false statements attributed to SinCo, which were adopted by the Court’s Order. SinCo requests the opportunity to defend itself by providing a complete record or relevant facts.

SinCo is specifically requesting reconsideration of the Court’s determination that “*Defense counsel’s mistake in this regard was inadvertent*,” and that, “*Plaintiff’s counsel¹ unreasonably restricted both the time allowed for Defendants’ counsel to review the “non-joint letter” and arbitrarily restricted the subject matter of that letter*.” Further, SinCo would request clarification that DEFENDANTS’ counsel’s behavior in refusing to cooperate, or in tying unrelated issue to leverage their position, is not being authorized by the Court as zealous advocacy. [ECF 186 at 9:13-14.]

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¹ An Order from the Court carries significant weight in the legal community and SinCo’s Counsel should be allowed to defend his reputation with a complete record of his actions, not just DEFENDANTS’ conclusions.



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SINCO REDLINED DEFENDANTS' JOINT LETTER AND DEFENDANTS REFUSED TO USE IT

The critical piece of evidence that is absent from the record, that DEFENDANTS intentionally failed to produce, was the fact that SinCo had used DEFENDANTS proposed letter and redlined it and returned it to DEFENDANTS keeping all of their section untouched, but they decided it was not enough to limit the argument to their section of the letter.

SinCo had been requesting dates certain for depositions from XINGKE from before the **March 1, 2019**, meet and confer. On **March 27, 2019**, at **12:18 PM** XINGKE proposed , “*In light of Judge Spero’s order that the depositions be completed no later than the end of May, however, Xingke will arrange for its employees to sit for depositions during the week of May 27 (which is a Monday) so they may be completed on Friday, May 31.*” Three hours later, at **3:05 PM**, SinCo drafted and sent over the proposed Joint Letter with this information.

On **March 27, 2019**, at approximately **6:59 PM**, and after regular office hours, I received a Joint Letter drafted by DEFENDANTS, as they simply ignored the draft I provide to them four hours earlier. At approximately **7:35 PM**, I redlined the DEFENDANTS' draft and returned it to them with a word version tracking the changes and a final PDF. Attached hereto as **Exhibit A** is a true and correct copy of the word version I sent converted to PDF to show the changes I made. SinCo would like to make these facts part of the record.

SINCO DID NOT HAVE OPPORTUNITY TO FILE AN OPPOSITION TO DEFENDANTS' RESPONSE

While SinCo was preparing a declaration and opposition to Xingke Electronics (Dongguan) Co., Ltd., Mui Liang Tjoa, Ng Cher Yong, and Liew Soon Yew (“DEFENDANTS”) **April 8, 2019**, Response to Order to Show Cause Why Defendants Should Not Pay Sanctions Regarding Exchange of Non-Joint Letters, the Court issued the **April 9, 2019** Order. [ECF 187]

DEFENDANTS' Response plays a bait and switch as to the issue that was disputed between SINCO and DEFENDANTS, as there was no dispute as to their arguments as to the location of the depositions as DEFENDANTS Response argues and the Court's Order appears to adopt. Furthermore, it falsely asserts that SinCo was attempting to censor DEFENDANTS position or acted unreasonably without actually allowing for a complete record. Exhibit A

The issue in dispute was the inclusion of DEFENDANTS position that, “*The Sanctions Order (Dkt. No. 163) requires the parties to meet and confer about the declaration supporting SinCo’s request for an award of attorney fees and costs (the “Declaration”) for the purpose of reaching an agreement as to the amount to be awarded before the Declaration is submitted to the Court (no later than 10 days after the Sanctions Order issued on March 20)... Rather than*



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ignore this problem, Defendants believe the prudent course is to present it to the Court for clarification and guidance.” [ECF 171 at 7:11-8:4.]

SinCo offered to allow DEFENDANTS to limit this unrelated discussion to their section to avoid implying that SinCo agreed that this was properly before the Court. Contrary to DEFENDANTS’ Response, SinCo never objected or prevented DEFENDANTS from addressing the dispute as to the location, which is clearly confirmed in the SinCo letter filed on **March 27, 2019** at 10:23 PM.²

ISSUE DISPUTED IN DEFENDANTS’ LETTER [ECF 171] NOT SAME IN THEIR RESPONSE [ECF 186]

SinCo did not limit DEFENDANTS on either position (1) location of the deposition, or (2) sanctions fees meet and confer in-person, it only indicated that it should be limited to DEFENDANTS section of the letter. DEFENDANTS’ representation that this was the issue in dispute is contradicted by reading of each parties separate letters. [ECF 170 “SINCO LETTER RE: XINGKE EMPLOYEE DEPOSITION SCHEDULE PUSUANT TO ORDER OF MARCH 20, 2019 [ECF 164]” **and** ECF 171 “DEFENDANT’S LETTER REGARDING AMOUNT OF SANCTIONS AWARD AND XINGKE EMPLOYEE DEPOSITION SCHEDULE.”] SinCo’s letter provided DEFENDANTS’ position on the Hong Kong/Singapore dispute, so to claim, as DEFENDANTS’ Response argues, and the Order seems to adopt that they were censored is simply unsupported. [ECF 170.]

DEFENDANTS’ Response to OSC states, “Defendants’ counsel had no alternative but to file separately, and so advised SinCo’s counsel.” DEFENDANTS’ evidence demonstrates that is not true:

Counsel,

I don’t read the order in the way that you do, so I wouldn’t include it. However, If I believed the order required my client to appear at the meet and confer I would file a motion for clarification as that doesn’t really have anything to do with the scheduling of the Xingke employee that we are supposed to address today. **It’s your call and your section, so I leave it to you.**

Fundamentally, **I still have no idea what issues you have with the fees sought so I can’t meaningfully provide a response to even determine if escalating the meet and confer to include the clients would be necessary**, as his requirement was designed by the Court as a measure of last resort before bringing it to the Court to encourage cooperation to avoid having to involve the clients.

² At 7:35 PM SinCo provided them a red-line of their Joint Letter that included all the issues, but limited to their section. See Exhibit A attached. At 8:40 PM DEFENDANTS indicated they would file their statement separately. This material fact is missing from the record.



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Lael Andara/Ropers Majeski Kohn & Bentley PC

See Declaration of Jeffrey L. Fazio, Exhibit D email of **March 27, 2019**, at 4:41 PM [ECF 186-5], which tells part of the story. In addition SinCo provided the attached redline of DEFENDANTS proposed joint letter on **March 27, 2019**, at 7:35 PM, that DEFENDANTS had sent to SinCo at 6:59 PM, which included these positions in their section. Exhibit A. DEFENDANTS simply ignored the joint letter that SinCo had sent them at 3:05 PM that day.

SinCo never dictated to DEFENDANTS that they could not address this issue in their section of the Joint Letter, only that the Joint Letter should not be presented to imply that SinCo agreed this was an issue properly before the Court, as the Order of **March 20, 2019**, directed that, “*The parties shall agree on the actual dates, and submit the schedule agreed upon to the Court within one week from the date of this order.*” [ECF 164.]

THE RECENT JOINT LETTER DOES NOT EVIDENCE COOPERATION

SinCo and its counsel are greatly concerned with the impression of this Court that, “*The Court is encouraged in this regard by the recent agreements by the parties on discovery matters and expects that this cooperation will continue for the remainder of the case,*” is misplaced given the escalating hostilities to date. SinCo is concerned that this recent order will embolden DEFENDANTS counsel to take zealous advocacy to the extreme if they perceive it excuses them from having to cooperate or act civilly.

It is important to appreciate that all the meet and confers and related orders all related to discovery that SinCo was attempting to obtain from DEFENDANTS. The Joint Letter of **December 5, 2019**, as to Defendant Ng [ECF 103] issue No. 1; the **January 9, 2019**, as to Defendant Tjoa [ECF 123] issue No. 5, and the Order of **March 13, 2019**, as to ESI production and XingKe employees issues Nos. 2 and 3 [ECF 155] had all directed DEFENDANTS to produce much of the substance of what is covered in the recent Joint Letter before the **April 3, 2019** meet and confer was even conducted. Sinco determined that it was better to attempt to obtain yet another agreement to provide the information sought, with the clients present, rather than bring serial motion practice on DEFENDANTS’ failure to provide what was already promised and past. [ECF 103, 123, 155] DEFENDANTS received the benefit of further delay in their production beyond what was previously agreed.

The one new issue that DEFENDANTS refused to meet and confer on, even though it was explicitly outlined in SinCo’s correspondence of **March 22, 2019**, better demonstrates DEFENDANTS’ willingness to simply refuse to address discovery issues contrary to the Court’s Standing Order and the fact that SinCo’s principals had traveled all the way from Singapore. DEFENDANTS claim they were unprepared and therefore this issue would require



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yet another separate meet and confer attended by the principals, at significant cost to SinCo. To date, no effort has been made to address these 15 interrogatory objects by XINGKE, wherein they primarily objected to subparts and provide no substantive response.

In this context, it is unfair to characterize SinCo's efforts as failing to cooperate where discovery has disproportionately been a burden SinCo paid to produce it and obtain it. SinCo cannot be deemed to be unreasonable simply because DEFENDANTS refuse to cooperate, thereby necessitating escalation of all discovery efforts to the Court, nor should DEFENDANTS be rewarded because Sinco elected to avoid motion practice.

ESCALATING HOSTILITY BETWEEN COUNSEL, DURING JUDICIAL PROCEEDINGS

On **April 3, 2019**, counsel for the parties met to discuss several discovery issues that were the subject of the Joint Letter that encouraged the Court as to cooperation. [ECF 185] That meeting was attended by my paralegal Manali Shah and DEFENDANTS' counsel Mr. Zhu, Mr. Yao, and Mr. Fazio. At one point we were discussing the designation of materials pursuant to the protective order and I brought up Mr. Tjoa's deposition transcript. Mr. Fazio asked if we had asked for the re-designations before filing our Motion for Sanctions and I replied we had on several occasions. I indicated that I had specifically asked Leslie Williams on several occasions on the status of the designations. Mr. Fazio then began discussing that he had reviewed the Tjoa deposition transcript and indicated that it shouldn't have been designated Attorney's Eyes only. I then asked why he would submit a declaration to the Court indicating that it was. [ECF 167-1.] Mr. Fazio who had already been hostile and rude leading up to this point, was visibly angry, hurled profanity at me directly, I will not repeat here. I had a concern that Mr. Fazio was going to escalate this matter into a physical altercation, so the subject was changed and we moved on. When I spoke to my paralegal after the meet and confer she was also concerned that the hostility in the room may have escalated to a physical altercation.

On **April 4, 2019**, during the deposition of SinCo's COO Jonathan Chee, Mr. Fazio was again hostile and condescending to myself and the witness, which is memorialized on the video of those proceedings. At one point Mr. Fazio turned to me and asked if we would like to break for lunch. I turned to the witness and asked if he wanted to continue or break for lunch and he indicated he was good to proceed. I advised Mr. Fazio we are good to proceed further. Mr. Fazio responded that we were taking lunch now. I asked why did he inquire if we wanted to break from lunch then? In response he again hurled an explicative noun at me directly, I will not repeat here. This may have been captured on the transcript or video, but the client specifically confirmed that he had also heard it.



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DEFENDANTS' PATTERN OF TYING UNRELATED ISSUES TOGETHER IS NOT ADVOCACY

DEFENDANTS have a pattern of relating one issue to another, even when they are wholly unrelated, in an attempt to leverage agreement for their position, the same is true here. In this case, the Court's Order of **March 20, 2019**, stated “*The parties shall agree on the actual dates, and submit the schedule agreed upon to the Court within one week from the date of this order.*” [ECF 164] DEFENDANTS read into that a requirement from the Order as to Sanctions, that it could not make any effort to meet and confer at any level unless, “*lead trial counsel for the disputing parties, along with their clients (which, for the entity clients, shall be the highest-ranking officer in the company), shall meet and confer in person.*” [ECF 163.]

A further example of this tying of unrelated issues was DEFENDANTS' insistence on appointment of a special master for discovery, that Plaintiff had originally offered, but upon discussing with Judge Chen, decided against. On **March 28, 2019**, in the hearing on SinCo's Motion to Amend the Complaint, Judge Chen asked DEFENDANTS' counsel if his clients would stipulate to have the Preliminary Injunctions in the State Action adopted by the Federal Court. Judge Chen ordered a stipulation be submitted to the Court by DEFENDANTS in a week if they would so consent. On **April 2, 2019**, DEFENDANTS sent SinCo an email demanding that “*Defendants will stipulate that the federal court may enforce the preliminary injunctions that the state court issued in connection with Mark Liew and Cy Young if Plaintiff will proceed with the stipulation it proposed regarding the appointment of a Special Master to handle all discovery matters in the federal litigation.*” [ECF 183.]

SinCo was required to conduct multiple in person meet and confers, exchange dozens of emails and letters, and then brief the issue all to support the task of scheduling depositions of witnesses identified in DEFENDANTS initial disclosures is not in step with the policy or the rules. In contrast, SinCo produced its witnesses when requested by the DEFENDANTS on the date they requested in the U.S., at SinCo's expense. For these reasons and those set forth above SinCo would request an opportunity to provide a complete record.

Sincerely,

/s/ Lael D. Andara

Lael D. Andara

LDA/rr

EXHIBIT A

- Email of March 27, 2019 at 3:05:08 PM and Attachment (Redline of Joint Letter)

From: Andara, Lael D.
To: Clay Zhu; Yi Yao; Jeffrey L. Fazio
Cc: Shah, Manali; Trevino, Michelle G.; Riedell, Roxana
Subject: [FEDERAL] Joint Letter Re Meet and Confer on March 27 2019 4830-7528-9743 v.1
Date: Wednesday, March 27, 2019 3:05:08 PM
Attachments: [FEDERAL] Joint Letter Re Meet and Confer on March 27 2019 4830-7528-9743 v.1.docx

Counsel,

Please find attached the proposed Joint Letter: Re Xingke Depositions. The language in your section is the same as from the previous Joint letter filed on **March 18, 2019**.

Regards,

Lael Andara
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Partner
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5 Attorneys for Defendants
Xingke Electronics (Dongguan) Co., Ltd.,
6 Mui Liang Tjoa, Ng Cher Yon, and Liew
Yew Soon

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SINCO TECHNOLOGIES PTE, LTD.,

No. 17-cv-05517-EMC-JCS

13 Plaintiff,

**JOINT LETTER REGARDING
AMOUNT OF SANCTIONS AWARD
AND XINGKE EMPLOYEE
DEPOSITION SCHEDULE
PUSUANT TO ORDER OF MARCH 20,
2019 [ECF 164]**

16 SINCO ELECTRONICS (DONGGUAN) CO.,
17 LTD., XINGKE ELECTRONICS
18 TECHNOLOGY CO., LTD., MUI LIANG
TJOA, NG CHER YON (AKA CY NG), and
LIEW YEW SOON (AKA MARK LIEW),

Defendants.

Hon. Joseph C. Spero

1 On March 11, 2019, the parties submitted a Joint Letter Re the meet and confer of
 2 March 1, 2019, that memorialized their unresolved discovery dispute as to: (3) Sinco
 3 Technologies Pte Ltd.'s, ("SINCO") request for Defendant Xingke Electronics (Dongguan) Co.,
 4 Ltd.'s ("XINGKE") employee depositions [Eric Pang; Gao Bingyi; Gouki Gao; Larry Sim Teck,
 5 Jerry Darui; Quek Seow Eng; Lim Chin Huan; and Ng Yi Ming]. [ECF 154] On March 13,
 6 2019, the Court ordered that "The parties shall meet and confer and agree upon a schedule for
 7 any XINGKE employee depositions sought by Sinco, and file it with the court on or before
 8 Monday, March 18, 2019." [ECF 155] On March 18, 2019, the parties submitted yet another
 9 Joint filing having failed to agree on a deposition schedule. [ECF 159] On March 20, 2019, the
 10 Court Ordered that, "Accordingly, the Court orders Defendants to make the Employee Witnesses
 11 available for deposition in Singapore, unless the Plaintiff determines that it can take the
 12 depositions in Hong Kong, in which case they will be held in Hong Kong," and "Under these
 13 circumstances, and to ensure that the case continues to move toward resolution, the Court orders
 14 that the Employee Witness depositions occur not later than May 31, 2019, and [t] he parties shall
 15 agree on the actual dates, and submit the schedule agreed upon to the Court within one week
 16 from the date of this order.

17 Pursuant to Judge Spero's Revised Civil Standing Order, the Order Re Joint Letter on
 18 Xingke Employee Depositions (Dkt. No. 164) ("Deposition Order"), and the Order Granting in
 19 Part and Denying in Part Motion for Sanctions and Vacating March 29, 2019 Motion Hearing
 20 ("Sanctions Order") (Dkt. No. 163), the parties hereby submit this Joint Letter in compliance
 21 with Paragraph No. 3 of the 3/30 Order and Paragraph No. 6 of the Sanctions Order.

22 **Xingke Employee Deposition Schedule.** In the Deposition Order the Court instructed
 23 "Defendants to make the [Xingke] Employee Witnesses available for deposition in Singapore,
 24 unless the Plaintiff determines that it can take depositions in Hong Kong, in which case they will
 25 be held in Hong Kong." Deposition Order ¶ 2. The Court also ordered that "the Employee
 26 Witnesses depositions occur not later than May 31, 2019[,]" and instructed the parties to "agree
 27 on the actual dates, and submit the schedule agreed upon to the Court within one week from the
 28 date of this order [*i.e.*, not later than March 27, 2019]." *Id.* ¶ 3.

1 The same day the Deposition Order issued, counsel for Defendants Xingke Electronics
 2 Technologies Co., Ltd. (“Xingke”), Mui Liang Tjoa, Ng Cher Yon, and Liew Yew Soon
 3 (collectively, “Defendants”) sent an email message to counsel for Plaintiff SinCo Technologies
 4 PTE Ltd. (“SinCo”) concerning the reasons the Employee Witnesses’ depositions may be taken
 5 in Hong Kong. In reply, SinCo’s counsel disagreed, asserting that the depositions may be taken
 6 in Singapore, but not Hong Kong.

7 **Meet and Confer Regarding Sanctions Award.** On March 20, 2019, the Court issued
 8 the Sanctions Order, which states that Defendant Tjoa must pay the “fees and costs incurred in
 9 the actual research and drafting of the [sanctions] Motion, and associated costs[,]” and instructed
 10 the parties to “meet and confer in an attempt to agree on the amount of attorney fees and costs. If
 11 they are unable to do so Mr. Tjoa may submit objections to the amount of the fee and cost bill
 12 within ten days of Plaintiff’s filing of the fee and cost declaration.” Sanctions Order ¶ 6.

13 On March 26, 2019, counsel for a copy of the declaration SinCo proposes to submit in
 14 support of its award of fees and costs (the “Declaration”) to Defendants’ counsel. Because the
 15 Sanctions Order appears to require SinCo to file the Declaration with the Court before the parties
 16 can comply with the Court’s requirement that the parties meet and confer for the purpose of
 17 reaching agreement as to the amount of the sanctions award, it appears that the parties will be
 18 unable to comply with that aspect of the Sanctions Order. Defendants’ counsel hereby present
 19 the matter to the Court for clarification; SinCo’s counsel asserts that there is no need to do so.

20 **I. XINGKE EMPLOYEE DEPOSITION SCHEDULE**

21 **SINCO’S POSITION:**

22 On March 14, 2019, SINCO drafted a letter to counsel for XINGKE after reviewing
 23 defendant’s Motion For Relief From Nondispositive Pretrial Order of Magistrate Judge [ECF
 24 156] stating:

25 To date we have requested the depositions of: (1) Eric Pang; (2) Gao Bingyi; (3)
 26 Gouki Gao; (4) Jerry Darui; (5) Quek Seow Eng; (6) Lim Chin Huan; (7) Ng Yi
Ming, and (8) Larry Sim Teck Beng. On March 1, 2019, you failed to identify
which of any these individuals would be made available for deposition. In
 27 today’s motion, XINGKE states, “the parties have already discussed thoroughly
in correspondence and during an in-person meet-and-confer session.” Can you
 28 please identify the individuals that XINGKE is willing to make available for

1 deposition and the proposed dates. To claim any meaningful meet and confer
2 was conducted this basic information should be provided.

3 Magistrate Judge Spero ruled that “[t]he parties shall meet and confer and agree
4 upon a schedule for any Xingke employee depositions sought by Sinco.” So the
5 unidentified individuals you reference in the motion (“three of the individuals it
6 wishes to depose are no longer in Xingke’s employment not being employees of
7 Xingke,”) would not be at issue. The fundamental problem, however, is that
8 XINGKE has made no effort to identify these individuals in the March 1, 2019,
9 meet and confer or in today’s motion. If they are truly not the current employee
10 of Xingke, SinCo would request documents evidencing that fact, and
11 accordingly if that fact were evidenced Sinco would agree to withdraw those
12 notices and issue subpoenas. See Ubiquiti Networks, Inc. v. Kozumi USA
13 Corp., 2013 U.S. Dist. LEXIS 53657, at *8 (N.D.Cal. Apr. 15, 2013) (“The
14 Federal Rules of Civil Procedure and the Hague Convention provide for a
15 mechanism by which a party can obtain a non-party’s deposition in another
16 country.”).

17 The letter further referenced that many of the witnesses sought were relied on in Defendant’s
18 initial disclosures of April 18, 2018.

19 On March 18, 2019, XINGKE in the Joint Statement failed to identify which employees
20 were no longer employees of XINGKE. SinCo stated in the Joint Statement:

21 Defendants counsel has failed to make Gao Bingyi, Ng Yi Ming and Larry Sim
22 Teck Beng available for deposition. Sinco would assume that these are the
23 unnamed ex-employees defendants referred to in their motion but would request
24 verification of that fact.¹

25 Although XINGKE did not specifically state this fact, provide evidence to substantiate it,
26 or a declaration to withdraw these individuals from their initial disclosures, the Court assumed
27 those individuals to be ex-employees. [ECF 164 at 1:24-26] Plaintiff would request a sworn
28 declaration confirming that fact, rather than allow XINGKE’s omission to confirm benefit them.

29 On March 26, 2019, at 9:15 AM, SINCO’s counsel sent an email stating:

30 Pursuant to the Court’s Order of March 20, 2019, we are required to provide the
31 Court with a schedule of the depositions of the XingKe witnesses by no later than
32 March 27, 2019. [ECF 164] Can you advise on the status of the schedule so we
33 can confirm our calendar?

34 Our correspondence of March 22, 2019, explained in great detail that after
35 contacting the U.S. Consulate General and your reference to Planet Depo, the

36

37 ¹ Plaintiff’s statement was an assumption or question, not a factual position
38 to prevent depositions to proceed without some factual basis to support the factual
39 assertion of XINGKE.

1 depositions cannot proceed in Hong Kong without violating local law, as none
2 of the witnesses are U.S. citizens. We would prefer to have these depositions
3 conducted in the U.S. rather than Singapore if at all possible. As a compromise,
4 would you consider making the witnesses available in Hawaii, as it
5 approximately the same flight as Singapore for the witnesses?

6 On March 26, 2019, at 3:43 PM, XINGKE's counsel sent a lengthy letter referencing the
7 preference for the depositions to proceed in Hong Kong. At the end of the letter counsel stated:

8 If you have specific dates in mind for each deponent, please let me know at
9 your first opportunity so we may establish a schedule with no last-minute
10 problems.²

11 On March 26, 2019, at 4:12 PM, SINCO's counsel sent an email responding:

12 King.com Ltd. v. 6 Waves LLC, No. C-13-3977 MMC, 2014 WL 1340574, at *6
13 (N.D. Cal. Mar. 31, 2014): "For the reasons discussed above with respect to
14 document production, however, it would appear that the Beijing You Mai
15 employees who reside in China are under the control of SWI and thus could be
16 brought by SWI to Hong Kong or the United States for deposition." The fact a
17 party can make a witness available for deposition is not the same issue as
18 whether Hong Kong would allow such a deposition. At the time of the
19 deposition the Court cited: <http://travel.state.gov/content/travel/english/legal-considerations/judicial/country/hong-kong-sar-china.html> at FN5. This link is no
20 longer operable and there is nothing to indicate that this is the current law 15 year
21 later in Hong Kong. Defendants now willfully ignore that the current U.S.
22 Department of State's Bureau of Consular Affairs, website as referenced above
23 says something materially different. See Id. At FN5 Furthermore, that case
24 refers to the context of the witness, which is considered in this case weigh more
25 towards Singapore than Hong Kong given their nationalities.

26 We will proceed with the depositions in Singapore.

27 We propose the following schedule, even though we have repeatedly requested
28 the witnesses availability since the March 1, 2019 meet and confer:

29 Jerry Darui April 22, 2019
30 Quek Seow Eng April 23, 2019
31 Lim Chin Huan April 24, 2019
32 Gouki Gao April 25, 2019
33 Eric Pang April 26, 2019

34 XINGKE'S counsel then sent four more emails renewing the demand for the deposition

35 in Hong Kong (4:22 PM; 5:44 PM; 5:51 PM; and 6:16 PM) followed by several emails the

36 following day until providing a substantive response at 12:28 PM on March 27, 2019, stating:

37 ² XINGKE's plan to always wait until the last possible moment to provide
38 these witnesses demonstrates their request SINCO provide a proposed deposition
39 schedule is like Lucy inviting Charlie Brown to kick the football.

1 In light of Judge Spero's order that the depositions be completed no later than the
 2 end of May, however, Xingke will arrange for its employees to sit for
 3 depositions during the week of May 27 (which is a Monday) so they may be
 4 completed on Friday, May 31.

5 SINCO objects to this repeated delay and dictation of the timing in which it is allowed to
 6 do discovery. However, SINCO will agree to these dates if the depositions proceed in Singapore
 7 as directed by the Court. [ECF 164 at 2:9-11] XingKe's counsel, previously demanded
 8 Defendants Mui Liang Tjoa (1/17/19) and Cy Ng's (2/12/18) depositions in Singapore.

9 **DEFENDANTS' POSITION:** During the course of the past seven days, Defendants' counsel
 10 have explained that both Hong Kong and Singapore are parties to the Hague Evidence
 11 Convention and that the rules governing voluntary depositions in both locations are, therefore,
 12 identical. This is important because Hong Kong is 60 miles away from the Xingke factory
 13 whereas Singapore is 1700 miles away and will require a substantial expenditure of time and
 14 resources to arrange for five employees to travel without significant disruption.

15 Nonetheless, SinCo's counsel insists that the depositions could not be taken in Hong
 16 Kong because the U.S. Department of State's Bureau of Consular Affairs states on its website
 17 that "consular officers are prohibited from taking voluntary depositions of non-U.S. citizen
 18 witnesses." (This portion of the website is under the section titled "Taking Voluntary
 19 Depositions of Willing Witnesses" at <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/HongKong.html>.)

20 As Defendants pointed out, however, the next sentence goes on to say, however, that "if
 21 prior permission is granted by Hong Kong's competent authority, voluntary depositions may be
 22 conducted by commissioners in Hong Kong regardless of the nationality of the witness, provided
 23 no compulsion is used." *Id.*³ Moreover, the State Department has noted that, in Singapore,
 24 "consular depositions or depositions conducted pursuant to a commission are not permitted.
 25 Depositions may be taken pursuant to letters of request submitted directly to the Singapore

26 ³ The letter in which Defendants' counsel explained this is attached hereto as **Exhibit A**
 27 (discussing, *inter alia*, *King.com Ltd. v. 6 Waves LLC*, 2014 WL 1340574, at *6 n. 5 (N.D. Cal.
 28 Mar. 31, 2014) (noting the State Department's observation that voluntary depositions may be
 29 taken in Hong Kong), and *Emerson Elec. Co. v. Suzhou Cleva Elec. Appliance Co.*, 2014 WL
 2986685, at *5 n. 6 (E.D. Mo. July 1, 2014) (same)).

1 Central Authority of the Convention.” <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Singapore.html>. Thus, if the parties were to rely exclusively on
 2 the State Department’s observations about the application of the Hague Evidence Convention, it
 3 would be more difficult to take a deposition in Singapore than in Hong Kong.

4 As Defendants’ counsel explained, however, the concern is illusory because the Court
 5 can issue an order appointing a court reporter as the deposition commissioner pursuant to Federal
 6 Rule of Civil Procedure 28(d)(1)(A), which is not only permissible, but encouraged by Supreme
 7 Court precedent. *See Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 542 (1987) (“In many situations the Letter of Request procedure
 8 authorized by the Convention would be unduly time consuming and expensive, as well as less
 9 certain to produce needed evidence than direct use of the Federal Rules”); *In re Cathode Ray
 10 Tube (CRT) Antitrust Litigation*, 2014 WL 54692496, *3 (N.D. Cal. Oct. 23, 2014) (“The
 11 Supreme Court and the Ninth Circuit agree that comity and foreign law alone are not dispositive
 12 when a discovery dispute arises regarding a foreign law’s protection of documents sought in a
 13 United States court”).

14 Defendants’ counsel also wrote to Optima Juris, explaining the situation the parties face
 15 here and inquiring whether it has proceeded in the manner described above. *See Exhibit B* (filed
 16 herewith). An Optima Juris representative said that it has and does, noting that the parties could
 17 proceed with the depositions in Hong Kong by stipulating that the court reporter may administer
 18 the oath to each witness or, alternatively, arrange for the Court to issue an order appointing the
 19 court-reporting service as the deposition commissioner pursuant to Federal Rule of Civil
 20 Procedure 28(d)(1)(A) and included among the three attachments a copy of such an order from
 21 the Northern District of New York as an example. *See Ex. B at 1, 3-4*. As applicable law and
 22 these documents make plain, proceeding with the Employee Witnesses’ depositions in Hong
 23 Kong is not only permissible, but far more fair in light of the circumstances.

24 **II. MEET-AND-CONFER REGARDING SANCTIONS AWARD**

25 **SINCo’s POSITION:**

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1 SinCo believes this is inappropriate as no meet and confer has been conducted in any
2 meaningful way as to the proposed declaration provided to XINGKE on **March 26, 2019.**
3 XINGKE has not identified a single issue.

DEFENDANTS' POSITION:

The Sanctions Order requires the parties to meet and confer about the Declaration for the purpose of reaching agreement as to the amount to be awarded before the Declaration is submitted to the Court (within 10 days of the issuance of the Sanctions Order, which issued on March 20, 2019). Sanctions Order ¶ 6. The Sanctions Order requires SinCo and Xingke's highest-ranking officers to attend each meet-and-confer session, *id.* ¶ 1, and, if the parties are unable to agree on an amount to be awarded as sanctions, Defendant Tjoa must file his objections with the Court not later than 10 days after the Declaration is filed, *id.* ¶ 6. To comply with these instructions, however, the parties must meet and confer no later than Friday, March 29, 2019. Because Defendants did not receive a copy of the Declaration until March 26, 2019, they have not yet completed their analysis of the amounts SinCo claims to have incurred in connection with researching and drafting its sanctions motion. Nor can the highest-ranking Xingke executive arrange to travel to the Bay Area on such short notice. Rather than ignore this problem, however, Defendants believe the prudent course is to present it to the Court for clarification.

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21 | DATED: March 27, 2019

ROPERS, MAJESKI, KOHN & BENTLEY

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by /s/ Lael D. Andara
Lael D. Andara

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R. H. and L. C. O'NEILL

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1 by /s/ Jeffrey L. Fazio
2 Jeffrey L. Fazio

3 Attorneys for Defendant
4 Xingke Electronics (Dongguan) Co., Ltd.,
5 Mui Liang Tjoa, Ng Cher Yon, and
6 Liew Yew Soon

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